

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

SHAWN HORNE
1829 W. 4th Street
Chester, PA 19013

Plaintiff,

v.

ADVANCE AUTO PARTS, INC.
d/b/a Advance Auto Parts
1781 Wilmington Pike
Glen Mills, PA 19342

Defendant.

CIVIL ACTION

No.:

JURY TRIAL DEMANDED

CIVIL ACTION COMPLAINT

Shawn Horne (hereinafter referred to as “Plaintiff,” unless indicated otherwise) by and through his undersigned counsel, hereby avers as follows:

INTRODUCTION

1. Plaintiff has initiated this action to redress violations by Advance Auto Parts, Inc. (hereinafter “Defendant”) of Section 1981 of the Civil Rights Act of 1866 (“Section 1981” – 42 U.S.C. § 1981), Title VII of the Civil Rights Act of 1964 (“Title VII” – 42 U.S.C. §§ 200d *et seq.*) and the Pennsylvania Human Relations Act (“PHRA”).¹ As a direct consequence of Defendant’s unlawful actions, Plaintiff seeks damages as set forth herein.

¹ Plaintiff intends to amend his instant lawsuit to include the same claims under the PHRA once his administrative remedies are fully exhausted with the Pennsylvania Human Relations Commission.

JURISDICTION AND VENUE

2. This Court has original subject matter jurisdiction over the instant action pursuant to 28 U.S.C. §§ 1331 and 1343(a)(4) because it arises under the laws of the United States and seeks redress for violations of federal laws.

3. This Court may properly assert personal jurisdiction over Defendant because its contacts with this state and this judicial district are sufficient for the exercise of jurisdiction over Defendant to comply with traditional notions of fair play and substantial justice, satisfying the standard set forth by the United States Supreme Court in *Int'l Shoe Co. v. Washington*, 326 U.S. 310 (1945), and its progeny.

4. Pursuant to 28 U.S.C. § 1392(b)(1) and (b)(2), venue is properly laid in this district because Defendant is deemed to reside where it is subjected to personal jurisdiction, rendering Defendant a resident of the Eastern District of Pennsylvania.

5. Plaintiff is proceeding herein (under Title VII) and has properly exhausted his administrative remedies by timely filing a Charge of Discrimination with the Equal Employment Opportunity Commission (“EEOC”) and by filing the instant lawsuit within ninety (90) days of receiving a notice of dismissal and/or right to sue letter from the EEOC.

PARTIES

6. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

7. Plaintiff is an adult individual, with an address as set forth in the caption.

8. Defendant is a nationwide automotive aftermarket parts provider that owns and operates the location at which Plaintiff physically worked.

9. At all times relevant herein, Defendant acted by and through its agents, servants and employees, each of whom acted at all times relevant herein in the course and scope of their employment with and for the Defendant.

FACTUAL BACKGROUND

10. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

11. Plaintiff is a black (African-American) male.

12. Plaintiff was hired by Defendant in or about 2017.

13. At all times during his employment with Defendant, Plaintiff was employed with Defendant in an in-store sales capacity.

14. Plaintiff remained employed with Defendant until on or about March 15, 2020 (for a period of approximately three (3) years) when he was unlawfully terminated.

15. Throughout his employment with Defendant, Plaintiff was a hard-working employee who performed his job well; was given positive feedback; was a recipient of good reviews; and received promotions.

16. In connection with one such promotion, Plaintiff was transferred to the above-captioned Glen Mills location, in or about mid-2019.

17. Plaintiff was the only African-American who worked in the Glen Mills location. Plaintiff was assigned to work in the front of the store.

18. Jacob Perritt was the Commercial Manager who worked in the back, who was responsible for coordinating with third-party dealerships.

19. Perritt made offensive racial comments or jokes often, sometimes several times a week, which Plaintiff found to be very offensive. By way of example only and not intended to be exhaustive, Perritt:

- (a) regularly commented and made jokes about the cocoa-butter Plaintiff and other African Americans used for their skin;
- (b) repeatedly brought up an episode of a television show where the character Archie Bunker (Caucasian) did not want the character George Jefferson (African-American) moving into his “white neighborhood”;
- (c) told Plaintiff that one of the cars Plaintiff drive was a “Black person’s car” and referred to Plaintiff’s other car as a “hood car”;
- (d) made other related racist comments, like “Black people drive ‘Crown Vics’”;
- (e) referred to a certain type of cigarette as the kind “only Black people smoke”;
- (f) stated, “since people hate Mondays, I’m going to start referring to Black people as ‘Mondays,’”; and
- (g) stated that the United States started to have problems once the schools became integrated.

20. Because the Glen Mills location lacked a general manager and Plaintiff feared retaliation, Plaintiff initially tolerated this discriminatory and harassing environment.

21. In Plaintiff’s last approximate three (3) months of work, a General Manager (Patricia Zindel) was hired and placed to work in the Glen Mills location.

22. In this approximate three-month period of time, Plaintiff spoke with Zindel at least three to four times, and most recently in late February of 2020. During these conversations, Plaintiff explained among other things that he: (a) was continually offended by Perritt’s racial

comments, which were not decreasing; and (b) felt that Zindel had been unfair to Plaintiff on account of his race, in the way that she spoke to and treated him.

23. On or about March 10, 2020, Plaintiff was informed that he was required to stay out of work, only to be later terminated on or about March 15, 2020 by the District Manager, James Breslin.

24. Plaintiff was informed that his termination was allegedly due to his “attitude.” However, Plaintiff had not received any prior progressive discipline; this was contrary to how much he was liked by customers and as reflected by prior management; and Plaintiff was terminated very shortly after expressing concerns of racial mistreatment.

25. Perritt was not terminated despite Defendant’s policy of alleged zero tolerance of racial discrimination; Zindel did nothing to address Plaintiff’s complaints or to prevent further racial mistreatment against Plaintiff; and then attempted to justify Plaintiff’s termination on account of his alleged “attitude,” shortly after he complained about race discrimination.

26. Plaintiff believes and therefore avers that he was subjected to a hostile work environment and terminated because of his race and/or complaints of race discrimination.

COUNT I

Violations of 42 U.S.C. Section 1981

([1] Race Discrimination; [2] Retaliation; and [3] Hostile Work Environment)

27. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

28. During Plaintiff’s employment with Defendant, he was subjected to discrimination and a hostile work environment through disparate and demeaning treatment, selective enforcement of policies, and targeted harassment because of his race and complaints about racial discrimination.

29. Plaintiff believes and therefore avers that he was suspended and ultimately terminated from his employment with Defendant because of his race.

30. These actions as aforesaid constitute unlawful discrimination and a hostile work environment under Section 1981.

COUNT II
Violations of Title VII
([1] Race Discrimination; [2] Retaliation; and [3] Hostile Work Environment)

31. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

32. Plaintiff repeats, reasserts and realleges each and every allegation of Count I of this Complaint, *supra*, as they constitute identical violations of Title VII.

33. These actions as aforesaid constitute violations of Title VII.

WHEREFORE, Plaintiff prays that this Court enter an Order providing that:

A. Defendant is to promulgate and adhere to a policy prohibiting discrimination and retaliation in the future against any employee(s);

B. Defendant is to compensate Plaintiff, reimburse Plaintiff, and make Plaintiff whole for any and all pay and benefits Plaintiff would have received had it not been for Defendant's illegal actions, including but not limited to back pay, front pay, salary, pay increases, bonuses, insurance, benefits, training, promotions, reinstatement and seniority;

C. Plaintiff is to be awarded punitive damages as permitted by applicable law, in an amount believed by the Court or trier of fact to be appropriate to punish Defendant for its willful, deliberate, malicious and outrageous conduct and to deter Defendant or other employers from engaging in such misconduct in the future;

D. Plaintiff is to be accorded other equitable and legal relief as the Court deems just, proper and appropriate (including but not limited to damages for emotional distress, pain, suffering and humiliation);


E. Plaintiff is to be awarded the costs and expenses of this action and reasonable attorneys' fees as provided by applicable federal and state law; and

F. Any verdict in favor of Plaintiff is to be molded by the Court to maximize the financial recovery available to Plaintiff in light of the caps on certain damages set forth in applicable federal law; and

G. Plaintiff's claims are to receive a trial by jury to the extent allowed by applicable law. Plaintiff has also endorsed this demand on the caption of this Complaint in accordance with Federal Rule of Civil Procedure 38(b).

Respectfully submitted,

KARPF, KARPF & CERUTTI, P.C.



Ari R. Karpf, Esquire
Adam C. Lease, Esquire
3331 Street Road
Two Greenwood Square, Suite 128
Bensalem, PA 19020
(215) 639-0801
Attorneys for Plaintiff

Date: October 12, 2020

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

Shawn Horne

CIVIL ACTION

v.


Advance Auto Parts, Inc. d/b/a Advance Auto Parts

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

<u>10/12/2020</u> Date	 Attorney-at-law	<u>Plaintiff</u> Attorney for
<u>(215) 639-0801</u> Telephone	<u>(215) 639-4970</u> FAX Number	<u>akarpf@karpf-law.com</u> E-Mail Address

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DESIGNATION FORM

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: 1829 W. 4th Street, Chester, PA 19013

Address of Defendant: 1781 Wilmington Pike, Glen Mills, PA 19342

Place of Accident, Incident or Transaction: Defendant's place of business

RELATED CASE, IF ANY:

Case Number: Judge: Date Terminated:

Civil cases are deemed related when **Yes** is answered to any of the following questions:

- | | | |
|--|------------------------------|--|
| 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |

I certify that, to my knowledge, the within case ☐ is / ☒ is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 10/12/2020

Attorney-at-Law / Pro Se Plaintiff

ARK2484 / 91538

Attorney I.D. # (if applicable)

CIVIL: (Place a ✓ in one category only)

A. Federal Question Cases:

- ☐ 1. Indemnity Contract, Marine Contract, and All Other Contracts
☐ 2. FELA
☐ 3. Jones Act-Personal Injury
☐ 4. Antitrust
☐ 5. Patent
☐ 6. Labor-Management Relations
☒ 7. Civil Rights
☐ 8. Habeas Corpus
☐ 9. Securities Act(s) Cases
☐ 10. Social Security Review Cases
☐ 11. All other Federal Question Cases
(Please specify):

B. Diversity Jurisdiction Cases:

- ☐ 1. Insurance Contract and Other Contracts
☐ 2. Airplane Personal Injury
☐ 3. Assault, Defamation
☐ 4. Marine Personal Injury
☐ 5. Motor Vehicle Personal Injury
☐ 6. Other Personal Injury (Please specify):
☐ 7. Products Liability
☐ 8. Products Liability – Asbestos
☐ 9. All other Diversity Cases
(Please specify):

ARBITRATION CERTIFICATION

(The effect of this certification is to remove the case from eligibility for arbitration.)

I, Ari R. Karpf, counsel of record or pro se plaintiff, do hereby certify:

☒ Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs:

☐ Relief other than monetary damages is sought.

DATE: 10/12/2020

Attorney-at-Law / Pro Se Plaintiff

ARK2484 / 91538

Attorney I.D. # (if applicable)

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

HORNE SHAWN

(b) County of Residence of First Listed Plaintiff Delaware
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Karpf, Karpf & Cerutti, P.C.; 3331 Street Road, Two Greenwood Square,
Suite 128, Bensalem, PA 19020; (215) 639-0801; akarpf@karpf-law.com

DEFENDANTS

ADVANCE AUTO PARTS, INC. D/B/A ADVANCE AUTO PARTS

County of Residence of First Listed Defendant Delaware
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	1	1	Incorporated or Principal Place of Business In This State	4	4
Citizen of Another State	2	2	Incorporated and Principal Place of Business In Another State	5	5
Citizen or Subject of a Foreign Country	3	3	Foreign Nation	6	6

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<div><div><div><div><div><div></div><div>110 Insurance</div></div><div><div></div><div>120 Marine</div></div><div><div></div><div>130 Miller Act</div></div><div><div></div><div>140 Negotiable Instrument</div></div><div><div></div><div>150 Recovery of Overpayment & Enforcement of Judgment</div></div><div><div></div><div>151 Medicare Act</div></div><div><div></div><div>152 Recovery of Defaulted Student Loans (Excludes Veterans)</div></div><div><div></div><div>153 Recovery of Overpayment of Veteran’s Benefits</div></div><div><div></div><div>160 Stockholders’ Suits</div></div><div><div></div><div>190 Other Contract</div></div><div><div></div><div>195 Contract Product Liability</div></div><div><div></div><div>196 Franchise</div></div></div></div></div><div><div><div>PERSONAL INJURY</div><div><div><div></div><div>310 Airplane</div></div><div><div></div><div>315 Airplane Product Liability</div></div><div><div></div><div>320 Assault, Libel & Slander</div></div><div><div></div><div>330 Federal Employers’ Liability</div></div><div><div></div><div>340 Marine</div></div><div><div></div><div>345 Marine Product Liability</div></div><div><div></div><div>350 Motor Vehicle</div></div><div><div></div><div>355 Motor Vehicle Product Liability</div></div><div><div></div><div>360 Other Personal Injury</div></div><div><div></div><div>362 Personal Injury - Medical Malpractice</div></div></div></div><div><div>PERSONAL INJURY</div><div><div><div></div><div>365 Personal Injury - Product Liability</div></div><div><div></div><div>367 Health Care/ Pharmaceutical Personal Injury Product Liability</div></div><div><div></div><div>368 Asbestos Personal Injury Product Liability</div></div></div></div><div><div>PERSONAL PROPERTY</div><div><div><div></div><div>370 Other Fraud</div></div><div><div></div><div>371 Truth in Lending</div></div><div><div></div><div>380 Other Personal Property Damage</div></div><div><div></div><div>385 Property Damage Product Liability</div></div></div></div></div></div> <div><div><div>625 Drug Related Seizure of Property 21 USC 881</div><div><div></div><div>690 Other</div></div></div></div> <div><div>LABOR</div><div><div><div></div><div>710 Fair Labor Standards Act</div></div><div><div></div><div>720 Labor/Management Relations</div></div><div><div></div><div>740 Railway Labor Act</div></div><div><div></div><div>751 Family and Medical Leave Act</div></div><div><div></div><div>790 Other Labor Litigation</div></div><div><div></div><div>791 Employee Retirement Income Security Act</div></div></div></div> <div><div>IMMIGRATION</div><div><div><div></div><div>462 Naturalization Application</div></div><div><div></div><div>465 Other Immigration Actions</div></div></div></div> <div><div><div>422 Appeal 28 USC 158</div><div><div></div><div>423 Withdrawal 28 USC 157</div></div></div></div> <div><div>PROPERTY RIGHTS</div><div><div><div></div><div>820 Copyrights</div></div><div><div></div><div>830 Patent</div></div><div><div></div><div>835 Patent - Abbreviated New Drug Application</div></div><div><div></div><div>840 Trademark</div></div></div></div> <div><div>SOCIAL SECURITY</div><div><div><div></div><div>861 HIA (1395ff)</div></div><div><div></div><div>862 Black Lung (923)</div></div><div><div></div><div>863 DIWC/DIWW (405(g))</div></div><div><div></div><div>864 SSID Title XVI</div></div><div><div></div><div>865 RSI (405(g))</div></div></div></div> <div><div>FEDERAL TAX SUITS</div><div><div><div></div><div>870 Taxes (U.S. Plaintiff or Defendant)</div></div><div><div></div><div>871 IRS—Third Party 26 USC 7609</div></div></div></div> <div><div><div>375 False Claims Act</div><div><div></div><div>376 Qui Tam (31 USC 3729(a))</div></div><div><div></div><div>400 State Reapportionment</div></div><div><div></div><div>410 Antitrust</div></div><div><div></div><div>430 Banks and Banking</div></div><div><div></div><div>450 Commerce</div></div><div><div></div><div>460 Deportation</div></div><div><div></div><div>470 Racketeer Influenced and Corrupt Organizations</div></div><div><div></div><div>480 Consumer Credit</div></div><div><div></div><div>490 Cable/Sat TV</div></div><div><div></div><div>850 Securities/Commodities/Exchange</div></div><div><div></div><div>890 Other Statutory Actions</div></div><div><div></div><div>891 Agricultural Acts</div></div><div><div></div><div>893 Environmental Matters</div></div><div><div></div><div>895 Freedom of Information Act</div></div><div><div></div><div>896 Arbitration</div></div><div><div></div><div>899 Administrative Procedure Act/Review or Appeal of Agency Decision</div></div><div><div></div><div>950 Constitutionality of State Statutes</div></div></div></div>					

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
 ☐ 2 Removed from State Court
 ☐ 3 Remanded from Appellate Court
 ☐ 4 Reinstated or Reopened
 ☐ 5 Transferred from Another District (specify)
 ☐ 6 Multidistrict Litigation - Transfer
 ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Section 1981 (42USC1981); Title VII (42USC2000)

Brief description of cause:
Violations Section 1981, Title VII and PA Human Relations Act.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$**

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

10/12/2020

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

Print

Save As...

Reset